

FONTANA DEVELOPMENT CORPORATION AND FONTANA RESORT & COUNTRY CLUB, INC., PETITIONERS, VS. THE HONORABLE DOLE-NCR REGIONAL DIRECTOR ALAN MACARAYA, CASHIER OF DOLE- NCR, CHRISTIAN...

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul the Resolution[1] of the public respondent DOLE-NCR Regional Director dated June 6, 2012 the dispositive portion of which reads:

“WHEREFORE, premises considered, the Urgent Motion to Quash Writ of Execution filed by Fontana Development Corporation (FDC) and Fontana Resort and Country Club, Inc. (FRCCI) is DENIED for lack of merit. No other motion of similar nature shall be entertained.”[2]

Facts:

FDC and FRCCI entered into a security service agreement[3] with Christian Investigation & Security Agency (CISA) for a period of one year starting from March 15, 2009 to March 14, 2010. Petitioners, however, pre-terminated the said service agreement effective January 2010.[4] Herein private respondents, security guards assigned at petitioners' premises, filed a complaint against CISA. Acting on the said complaint, DOLE-NCR thru Labor Inspector Ruby P. Daquigan conducted an inspection on the premises/office of CISA located at Suite 101-C, No. 4 Maaralin St., Diliman Quezon City on March 3, 2010. The said inspection yielded the following findings:[5]

- Non-presentation of records
- As per complaint

- underpayment of wages

- n/p of legal holiday pay

- n/p of premium pay for rest day

- n/p of 13[th] month pay

- n/p of overtime pay

- n/p of five days service incentive leave pay

- n/p of night shift differential

On the basis of Daquigan's inspection report, DOLE-NCR OIC Pelagio Laurente issued a summons dated September 3, 2010 to petitioners ordering them to appear before DOLE-NCR Senior Labor Arbiter Augusto Gwynne Lasay on September 20, 2010 at 2:00PM to submit any question and/or effect restitution on the said complaint and the violations noted.[6] Petitioners, represented by their counsel appeared on even date.[7] On September 28, 2010, petitioners thru counsel filed a Motion for Extension of Time to File Responsive Pleading.[8] Again, on October 13, 2010, petitioners thru counsel filed another Motion for Extension of Time to File Responsive Pleading.[9] Finally, on October 15, 2010, petitioners thru counsel filed a Motion to Dismiss on the ground of lack of jurisdiction predicated upon the premise that there was no employer-employee relationship between petitioners and complainants and that the DOLE-NCR lacks territorial jurisdiction over the petitioners as their place of business is located at Fontana Leisure Park in Clark Special Economic Zone, Pampanga.[10]

The Motion to Dismiss was denied in the Order dated November 10, 2010 by the DOLE in this wise, to wit:

“It must be noted that under Section 8.4, Department Order No. 14, Series of 2001, the principal, Fontana Development Corporation and Fontana Resort and Country Club, and the security service contractor, Christian Investigation & Security Agency, are both required to keep and maintain separate employment records. Corollarily, inspection maybe conducted both by this office, DOLE-NCR, at Christian Investigation & Security Agency situated at Suite 101-C, No. 4 Maaralin St., Diliman, Quezon City and by DOLE Region III at Fontana Development Corporation and Fontana Resort and Country Club located Clark Special Economic Zone, Pampanga. Christian Investigation & Security Agency and Fontana Development Corporation and Fontana Resort and Country Club need not be separately inspected by the Department of Labor and Employment. Inspection of either establishment vests the appropriate Regional Office of jurisdiction.”

To reiterate, joinder of Christian Investigation & Security Agency and Fontana Development Corporation and Fontana Resort and Country Club as parties respondents, is based not only on Article 128 of the Labor Code but also on Articles 106-108 of the same Code. Christian Investigation & Security Agency and Fontana Development Corporation and Fontana Resort and Country Club need not be separately inspected by the Department of Labor and Employment.”[11]

The said Order also granted the complainants' monetary claims, thus:

“WHEREFORE, premises considered CHRISTIAN INVESTIGATION & SECURITY AGENCY/ MR. ROLANDO C. DELA CRUZ and /or FONTANA DEVELOPMENT CORPORATION (FDC)/ FONTANA RESORT AND COUNTRY CLUB, INC. (FRCCI) is/are jointly and severally ordered to pay Mr. Gilbert Joves and twenty seven (27) others, the aggregate amount of FIVE HUNDRED TEN THOUSAND SIX HUNDRED TWENTY THREE PESOS & 53/100 (P510,623.53) within ten (10) days from receipt hereof. Failure to comply with this Order within the period prescribed shall cause the imposition of a penalty of double indemnity pursuant to Republic Act 8188, otherwise known as “An Act increasing the penalty and imposing Double Indemnity for violation of the prescribed increase or adjustment in the Wage Rates.”

Further, respondent security agency is directed to present its employment records (payrolls and daily time records) covering the period three (3) years back reckoned from the date of inspection last March 1, 2010 for examination as to compliance with labor standards. Submission shall be within ten (10) days from receipt

hereof, otherwise, criminal charges shall be filed in the regular court for violation of Article 128 of the Labor Code, as amended, in relation to Article 288 of the same Code.

Writ of Execution shall be issued upon finality of this Order.”[12]

The Motion for Reconsideration treated as an appeal on the said Order was not perfected by CISA whereas petitioners failed to interpose their own appeal within the reglementary period, hence the Order became final and executory as shown by the Entry of Judgment issued on October 4, 2011,[13] thus, a writ of execution was issued on February 14, 2012.[14]

Petitioners thru counsel filed an Urgent Motion to Quash Writ of Execution on May 8, 2012[15] on the ground that the petitioners' counsel had not received any copy of the resolution of their Motion to Dismiss, hence the case could not be deemed final and executory as there was no valid service thereof.

The said Urgent Motion was denied by the DOLE thru its Resolution dated June 6, 2012. Dole Regional Director CEO III Atty. Alan M. Macaraya stated in the said Resolution that petitioners FDC and FRCC were duly notified of the Order issued by the Secretary of Labor and Employment. At any rate, due process seeks not to safeguard lack of previous notice but the denial of the opportunity to be heard. In the case at bar, FDC and FRCC were afforded opportunity to be heard and raise and prove their defenses. In fact FDC and FRCC duly participated during the hearings conducted after the inspection.[16]

On June 21, 2012, petitioners' account at Banco de Oro was garnished in the amount of P722,707.53.[17] The said amount was released to the private respondents by order of DOLE CEO III Atty. Macaraya on August 3, 2012.

Hence this petition.

Petitioners insist that they were not duly notified of the Order dated November 10, 2010 which is a requirement of the rules, particularly Section 4, Rule II on the Rules of Disposition of Labor Standards Cases and Section 10 of the 2004 DOLE Manual on the Disposition and Settlement of Labor Standard cases which state as follows: “Notices and copies or orders shall be served on the parties or their duly authorized representatives at their last known office or home addresses or, if they are represented by counsel, through the latter.” Petitioners argue that while the Order may have become final as to CISA, the same cannot be deemed final and executory with respect to petitioners because the latter's counsel of record did not receive said Order. Thus, the right of petitioners to due process was violated.[18]

Are the petitioners correct?

The petition is meritorious.

The records show that the assailed Order dated November 10, 2010 contain the notation on the last bottom page: Copy furnished: Mr. Gilbert Joves et al., c/o Elmer Balajadia, 131-B Camia St., Sonia Subd., Dela Paz, Pasig City.[19] However, the other parties, CISA and the herein petitioners were not included in the parties copy furnished. While CISA filed their appeal, though not perfected, herein petitioners were not able to file their appeal to the said Order. Petitioners charge their failure to file an appeal to the lack of notice to their counsel of record of the said Order.

We believe that there was really no service of notice of the said Order upon petitioners for the following reasons:

One, the Order itself did not include the petitioners in the “copy furnished” parties; and

Two, in the Resolution dated June 6, 2012 issued by Atty. Alan M. Macaraya, the public respondent stated the following:

“In this case, FDC and FRCCI had every opportunity to be heard. In fact, summon was issued against herein movants and they were informed of the pending case filed against complainants' direct employer Christian Investigation and Security Agency (CISA). On the other hand, CISA, as the direct employer of the employees concerned, likewise had every opportunity to be heard and raise and prove its defenses. Notably, respondents CISA, FDC and FRCCI even participated during the summary hearings conducted after the inspection. Further respondent CISA was able to move for reconsideration of our 10 November 2010 Order which was treated as an appeal.”[20]

From the foregoing discourse, it is crystal clear that only CISA was furnished a copy of the assailed November 10, 2010 Order. Petitioners' assertion that they were not furnished a copy of the said Order is therefore proved.

The 2004 DOLE Manual on the Disposition of Labor Standards Cases provides:

Section 4, Rule II. Service of notices and orders:

Notices and copies or orders shall be served on the parties or their duly authorized representatives at their last known office or home addresses or, if they are represented by a counsel, through the latter.

In case of personal service, the process server shall submit this return within seventy-two (72) hours from date of service stating legibly in the return his name, the mode of service, the names of the authorized persons served and the date of actual receipt of the document, if no service was effected, the serving officer shall state in the return the reason therefore. The return shall form part of the records of the case.

Sec. 19, Rule II Motion for Reconsideration -

The aggrieved party may file a motion for reconsideration of the Order of the Regional Office within seven (7) calendar days from receipt by him of a copy of said Order.

The Regional Director shall resolve the motion for reconsideration of the Order of the Regional Office within ten (10) calendar days from receipt thereof. A motion for reconsideration filed beyond the seven-day reglementary period shall be treated as an appeal if filed within the ten-day reglementary period for appeal but subject to the requirements for the perfection of an appeal.

No second motion for reconsideration shall be entertained in any case.

Section 1, Rule IV Appeal -

The Order of the Regional Director shall be final and executory unless appealed to the Secretary of the Labor and Employment within ten (10) calendar days from receipt thereof.

It must be remembered that petitioners were party respondents in the labor case NCROO-QCFO-1002-IS-002 (OS-LS-0154-0118-2011). Petitioners were represented by the counsel of record, Zambrano & Gruba Law Offices, as reflected in the records. It was not proper for the public respondent to disregard the right of petitioners to notice for the reason that the latter's liability is joint and solidary with that of CISA. Petitioners must also be afforded the same opportunity afforded to its co-respondent CISA. It would be the height of injustice to afford notice to one respondent and deprive the other of the same right which under the law is rightfully theirs. It would be tantamount to a deprivation of property without due process.

The Supreme Court, in a plethora of cases ruled that when a party is represented by counsel, notice must be served upon the counsel of record at his given address.[21]

Due to the lack of notice to petitioners, the assailed Order of November 10, 2010 cannot be deemed final and executory as to petitioners. Therefore, the writ of execution and the corresponding garnishment of the petitioners' BDO account was an abuse of discretion amounting to lack or excess of jurisdiction correctible by certiorari.

As to the contention of public respondents that petitioners failed to exhaust administrative remedies, the same is unavailing. Public respondents contend that petitioners should have filed an appeal before the Secretary of Labor and Employment within ten (10) days from receipt of the Order of the Regional Director. Further, public respondents claim that this court has no jurisdiction to hear and decide questions which arise from and are incidental to the enforcement of decisions, orders or awards rendered in labor cases by appropriate officers and tribunals of the Department of Labor and Employment. Since the money was garnished pursuant to the Notice of Garnishment to implement the Writ of Execution, which is an incident of the labor case, public respondents argue that this Court has no jurisdiction over the instant case.

Be it stressed that petitioners vigorously assert that they did not receive the Order dated November 10, 2010 issued by the Regional Director; hence, they have nothing to elevate before the Secretary of Labor. What they are assailing herein is the denial of their Urgent Motion to Quash Writ of Execution by the Regional Director which was issued with grave abuse of discretion, a proper subject of a petition for certiorari under Rule 65 of the Rules of Court. Even the Regional Director, through its letter dated July 13, 2012, acknowledged the fact that the denial of a motion to quash writ of execution is an interlocutory order and it can only be assailed through a special civil action for certiorari under Rule 65 of the Rules of Court.²² Thus, contrary to public respondents' assertion, this Court has jurisdiction to resolve the instant petition.

WHEREFORE, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the Resolution dated June 6, 2012 is hereby SET ASIDE and the writ of execution dated February 14, 2010 is hereby QUASHED for being premature. The case is REMANDED to the DOLE-NCR for proper disposition.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, at 29-33

[2] Ibid, at 33

[3] Ibid, at 55-65

[4] Motion to Dismiss, par. 2.3, p. 2

[5] Rollo, at 67

[6] Ibid, at 66

[7] Order, dated November 10, 2010 p. 2; Rollo, at 82

[8] Rollo, at 68-69

[9] Ibid, at 70-71

[10] Ibid, at 72-79 (Motion to Dismiss)

[11] Order, Dated November 10, 2010; Rollo, at 81-96

[12] Ibid, at 96

[13] Writ of Execution, p. 2; Rollo, at 98

[14] Rollo, at 97-98

[15] Ibid, at 99-106

[16] Ibid, at 29-34

[17] Ibid, at 107

[18] Petition for Certiorari, Rollo, at 3-24

[19] Rollo, at 96

[20] Rollo, at pp. 30-31 (Order, November 10, 2010)

[21] National Investment and Development Corporation- Philippine National Bank vs. Court of Appeals, GR No. 117408, March 26, 1997; San Andres vs. Court of Appeals, GR No. 78341, August 3, 1992.

[22] Rollo, at 34.

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